

March 21, 2019

## MEMORANDUM

**To:** Housing, Health, Energy & Workers Rights Committee Members  
**From:** Dan Eder, Central Staff Deputy Director  
**Subject:** Initiative 124 – Background and Status

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The Housing, Health, Energy & Workers Rights Committee may be interested in exploring legislative approaches that would extend protections to hotel workers similar to those included in the Hotel Employees Health and Safety Initiative (Initiative 124). This memo highlights the current status of the initiative and a summary of the initiative's key provisions.

### **I. Current Status**

Seattle voters approved Initiative 124 on November 6, 2016. The provisions of Initiative 124 were added to Seattle Municipal Code (SMC) at [Section 14.25](#), and the Office of Labor Standards issued final administrative rules that went into effect on July 1, 2018.

Shortly after Initiative 124's passage, various hotel associations filed an action in state court challenging the initiative on several grounds. The King County Superior Court upheld the initiative. However, on December 24, 2018, Division I of the Washington State Court of Appeals invalidated Initiative 124 in its entirety based on its conclusion that Initiative 124 contained multiple, unrelated subjects. The City Attorney's Office filed a petition for review in the Washington State Supreme Court. At least until resolution of the Supreme Court proceedings, Initiative 124 (codified in SMC 14.25) and the associated administrative rules promulgated by the Office of Labor Standards are both effectively on hold.

Separately, the ERISA Industry Committee (ERIC) filed a federal district court case regarding health care provisions included in the initiative. That case is on hold pending the resolution of the state court action.

### **II. Initiative 124 Key Provisions**

The entire initiative applies to those hotels with 60 or more guest rooms. As noted below, some provisions apply only to large hotels, defined as having 100 or more guest rooms.

#### **Part 1 – Protecting Hotel Employees from Violent Assault and Sexual Harassment**

Initiative 124 is intended to "protect hotel employees from violent assault, including sexual assault, and sexual harassment."

- A. *Panic Buttons* ([14.25.030](#)). Hotel employers must provide a panic button to each employee assigned to work alone in a guest room.

- B. *Notices* ([14.25.050](#)). Hotels must post signs in each room alerting guests that the hotel has provided panic buttons to employees.
- C. *List of Accused Guests* ([14.25.040](#)). Hotel employers must maintain a list of guests who have been accused of any act of violence, including assault, sexual assault or sexual harassment towards an employee. Accused guests must remain on such a list for at least five years from the date of the most recent accusation.
  - 1. Hotel employers must ban guests from returning to their hotel for at least three years after the date of the reported violent incident in the event that both:
    - a. The accusation against the guest involves assault, sexual assault, or sexual harassment; and
    - b. The accusation is supported by “a statement under penalty of perjury” or “other evidence.”
  - 2. Hotel employers must alert employees assigned to work alone in guest rooms when any guest on the list described above is staying at the hotel, and hotel employers must “warn the employees to exercise caution when entering [the] room [of any such guest] during the time the guest is staying in the hotel.”
- D. *Physical Separation* ([14.25.060.A](#)). Upon request by an employee who reports an occurrence of an act of violence by a guest staying at a hotel, the hotel must reassign the employee to work on another floor or in another area (if another floor is unavailable) for the duration of the accused guest’s stay at the hotel.
- E. *Paid Time Off* ([14.25.060.B](#)). Hotels must immediately provide each employee who reports an act of violence by a guest with paid time off at the employee’s regular rate of pay to file a police report and to consult with a counselor or advisor of the employee’s choosing.

## Part 2 – Protecting Hotel Employees from Injury

Initiative 124 notes that hotel workers face potential injury from “heavy lifting, repetitive tasks, and chemical exposure,” and the initiative is intended to protect workers from on-the-job injuries.

- A. *Reasonable Safety Practices* ([14.25.080](#)). Hotel employers are required to “use safety devices, and safeguards and use work practices, methods, processes, and means that are reasonably adequate to make their workplaces safe.”

- B. *Chemical Hazards* ([14.25.090](#)). Hotel employers must control chemical hazards to protect employees from exposure to chemical agents. Hotel employers also must provide information to employees about any new chemicals they may become exposure to in the workplace.
- C. *Square Footage Limits* ([14.25.100](#)). The initiative includes new requirements for how large hotels (those with 100 or more guest rooms) may assign housekeeping work.
  - 1. A large hotel cannot require that a housekeeper clean more than 5,000 square feet of floor space in an eight-hour shift.
  - 2. In the event that a housekeeper agrees to clean more than 5,000 square feet, a large hotel must pay a 50 percent hourly premium for all time spent cleaning on the day the overage occurred.
  - 3. These requirements are pro-rated for employees who devote less than eight hours per day to cleaning guest rooms and are also adjusted for employees cleaning ten or more “strenuous rooms” (a defined term meaning a room with either a scheduled checkout, a cot, a rollout bed, a pet bed, or a crib) within an eight-hour period.

### Part 3 – Improving Access to Medical Care for Low Income Hotel Employees

Initiative 124 is intended to “improve access to affordable family medical care for hotel employees.”

- A. *Additional compensation* ([14.25.120](#)). Large hotel employers must pay low-income workers additional money that is reflective of the cost of an insurance policy on the Washington Health Benefit Exchange. The payment amount owing to the employee is the greater of:
  - 1. \$200 monthly, adjusted by a measure of health care cost inflation (\$295 for 2019); or
  - 2. The difference between (a) the monthly premium for the lowest-cost, gold-level policy available on the Washington Health Benefit Exchange and (b) 7.5 percent of the amount that the employee’s previous month’s wages exceeded the federal poverty line.
- B. *Exception*. An employer is not required to pay additional money to an employee that has enrolled in an employer-sponsored health insurance plan that meets the affordability and quality requirements set out by the ordinance.

#### Part 4 – Preventing Disruptions in the Hotel Industry

Initiative 124 is intended to “reduce disruptions to the Seattle economy that could result from the increasing number of property sales and changes in ownership in the hotel industry.”

- A. *Worker Retention* ([14.25.140](#)). When a hotel changes hands, several provisions protect employees working at that hotel. Broadly speaking, the new hotel owner must initially offer jobs to the hotel workers employed by the previous owner before hiring any new employees. However, the new hotel owner may opt to employ fewer employees overall and retain only a subset of the existing employees based on seniority, or it may otherwise discharge any existing employee(s) for just cause.

#### Part 5 – Enforcing Compliance with the Law ([14.25.150](#))

- A. *Rules*. The Office of Labor Standards (OLS) is authorized to promulgate rules, but – as described below – OLS is not authorized to enforce Initiative 124. Nonetheless, employees who believe they have not been properly compensated may file a complaint with OLS under the City’s separate Wage Theft law provisions.
- B. *Investigation*. The City of Seattle “may investigate charges alleging violations ... and shall have such powers and duties in the performance of these functions as are necessary and proper in the performance of the same and provided for by law.”<sup>1</sup>
- C. *Enforcement*. Unlike other municipal labor laws (e.g., Wage Theft, Minimum Wage, Secure Scheduling, Paid Sick & Safe Time), the City of Seattle does not have direct a role in enforcing Initiative 124. The initiative provides hotel employees with a private right of action and allows hotel workers to sue their employer in “King County Superior Court or any other court of competent jurisdiction” and to seek monetary or injunctive relief including but not limited to lost wages and other damages, reinstatement, a portion of any imposed civil penalties, and attorneys’ fees.

#### Part 6 – Definitions ([14.25.160](#))

- A. There are specific definitions for many of the terms used in Initiative 124.

cc: Kirstan Arestad, Central Staff Director

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<sup>1</sup> The Initiative specifically indicates that the Office for Civil Rights (OCR) rather than OLS may conduct such investigations. When the Initiative was passed by voters in 2016, OLS was a division within OCR. Shortly after the Initiative became law, City Council passed legislation establishing OLS as a stand-alone office.